

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

LUNKENHEIMER COMPANY, ET AL.,: CASE NO. 1:11-CV-824

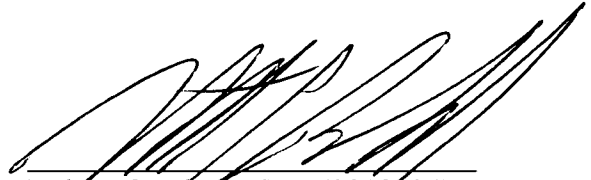
Plaintiffs : **JUDGE: Timothy S. Black**

VS. :

TYCO FLOW CONTROL PACIFIC : MOTION TO WITHDRAW AS
PTY LTD, ET AL., ATTORNEYS FOR PLAINTIFFS AND
: COUNTERCLAIM DEFENDANTS AND
REQUEST FOR ADDITIONAL
TIME FOR PLAINTIFFS AND
COUNTERCLAIM DEFENDANTS TO
RETAIN NEW COUNSEL

Defendants. :

Now comes Robert G. Block of Schwartz Manes Ruby & Slovin, LPA, (“SMRS”) attorneys for Plaintiffs, The Lunkenheimer Company, Uswatta Partners, LLC, Uswatta Partners, and Consolidated Valves, Ltd. and Counterclaim Defendants, Dr. Bernard DeSilva, The Lunkenheimer Company, Inc., The Lunkenheimer Company, Ltd., Conflow Manufacturing, Inc., Lunkenheimer-Energovalves, Inc., Consolidated Valves, Ltd., Uswatta Partners, LLC, and the Estate of Sheila DeSilva (“Plaintiffs and Counterclaim Defendants”), and pursuant to the S. D. Ohio Rule 83.4 (c), the Ohio Code of Professional Responsibility Rule 1.16(a) (5) and client’s failure to pay and cooperate with his attorneys, move this Court for an Order granting undersigned attorneys’ request to withdraw as the attorneys for the Plaintiffs and Counterclaim Defendants. SMRS further requests a reasonable extension of time for the dates pertaining to the outstanding discovery requests, depositions and the dates included in the Court’s Scheduling Order so Plaintiffs and Counterclaim Defendants can retain new counsel.



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Attorneys for Plaintiffs and Counterclaim
Defendants

MEMORANDUM

After Dr. Bernard DeSilva signed a November 28, 2012 Agreement with SMRS on behalf of himself, individually, and his various entities named in the Complaint and Counterclaim, SMRS entered an appearance on December 14, 2012 as attorneys for Plaintiffs and Counterclaim Defendants after the litigation had already been pending since November 22, 2011. An Answer responding to the allegations contained in the Counterclaim was filed on December 14, 2012. Prior to SMRS entering an appearance, this dispute had a long and protracted history as evidenced by the prior filed pleadings. Notwithstanding, SMRS has made a concerted but unsuccessful attempt to work with Dr. Bernard DeSilva, his representative and opposing counsel to bring the Parties to the table for settlement negotiations or mediation.

Under the Agreement between SMRS and Dr. DeSilva, he agreed to pay SMRS' invoiced attorney fees as well as periodic retainers. After repeated written requests, Dr. DeSilva has failed to do so. Continuing to represent the Plaintiffs and Counterclaim Defendants under these circumstances creates a serious financial burden on SMRS and a conflict of interest between the Plaintiffs and Counterclaim Defendants and SMRS.

As further support for the Motion, SMRS has made numerous attempts to obtain information from the Dr. DeSilva that is crucial to the legal representation, and to date, he has

failed to produce this information. Dr. DeSilva's makes it impossible for SMRS to continue its legal representation because the Plaintiffs and Counterclaim Defendants are subject to the following time constraints:

- Notice of Dr. DeSilva's deposition on February 28, 2013;
- Notice of the deposition on February 26, 2013 of a designated representative from Lukenheimer Company;
- Notice of the deposition on February 26, 2013 of a designated representative from Lukenheimer Company, LTD;
- Notice of the deposition on February 27, 2013 of a designated representative from Consolidated Valves, LTD;
- Notice of the deposition on February 27, 2013 of a designated representative from Conflow Manufacturing, Inc.;
- Notice of the deposition on March 1, 2013 of a designated representative from USWATTA Partners, LLC;
- Notice of the deposition on March 1, 2013 of a designated representative from USWATTA Partners; and
- The dates contained in this Court's Scheduling Orders.

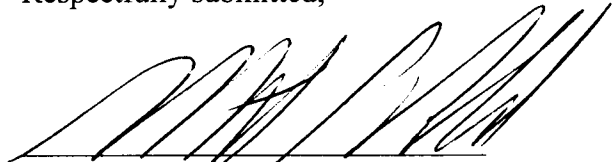
The failure of Dr. DeSilva to compensate SMRS and Dr. DeSilva's refusal to provide SMRS with information necessary for the legal representation makes it impossible for SMRS to continue as attorneys for the Plaintiffs and Counterclaim Defendants.

To comply with SMRS' obligations under the attorney client privilege and the Ohio Code of Professional Responsibility, SMRS can provide this Court with additional supporting documentation under seal and *in camera*. However, SMRS strongly contends, that such a

procedure is unnecessary because this Memorandum, along with the attached Affidavit (Exhibit “A”), provides this Court with sufficient evidence to grant the Motion pursuant to S. D. Ohio Rule 83(c) and the Ohio Code of Professional Responsibility Rule 1.16(a) (5).

SMRS requests an Order from this Court granting their Motion to withdraw as attorneys for the Plaintiffs and Counterclaim Defendants. SMRS further requests a reasonable extension of time for the dates pertaining to the outstanding discovery requests, depositions and the dates included in the Court’s Scheduling Order so Plaintiffs and Counterclaim Defendants can retain new counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. G. Block', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion has been served on the 12th day of February, 2013 by ordinary electronic service on the following attorneys:

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Tyco Valves & Controls LP, TV&C GP Holding, LLC, and

Counterclaim Plaintiff Tyco Flow Control Pacific Pty Ltd.

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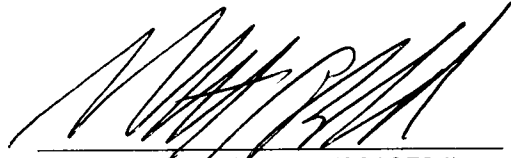
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Attorney for Counterclaim Defendant, Cincinnati Valve Company.



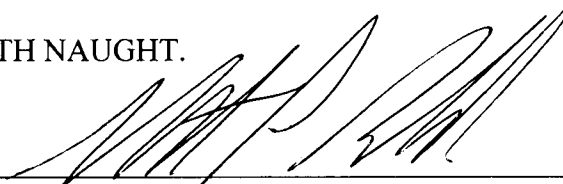
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4. Prior to entering an appearance, Plaintiffs and Counterclaim Defendants had been involved in this litigation since the Complaint was filed on November 22, 2011;
5. Prior to SMRS entering an appearance, this dispute had a long and protracted history as evidenced by the prior filed pleadings.
6. SMRS has made a concerted but unsuccessful attempt to work with Dr. DeSilva, his representative and opposing counsel to bring the Parties to the table for settlement negotiations or mediation;
7. After repeated written requests by SMRS, Dr. DeSilva has failed to pay SMRS the periodic retainers pursuant to the November 28, 2012 Agreement;
8. SMRS has made numerous attempts to obtain information from Dr. DeSilva that is crucial to the legal representation, and to date, the Dr. DeSilva has failed to produce this information;
9. Plaintiffs and Counterclaim Defendants are subject to the following time constraints:
 - a. Notice of Dr. DeSilva's deposition on February 28, 2013;
 - b. Notice of the deposition on February 26, 2013 of a designated representative from Lukenheimer Company;
 - c. Notice of the deposition on February 26, 2013 of a designated representative from Lukenheimer Company, LTD;
 - d. Notice of the deposition on February 27, 2013 of a designated representative from Consolidated Valves, LTD;
 - e. Notice of the deposition on February 27, 2013 of a designated representative from Conflow Manufacturing, Inc.;
 - f. Notice of the deposition on March 1, 2013 of a designated representative from USWATTA Partners, LLC;

- g. Notice of the deposition on March 1, 2013 of a designated representative from USWATTA Partners; and
 - h. The dates contained in this Court's Scheduling Orders.
10. The failure of Dr. DeSilva to compensate SMRS as agreed upon in the November 28, 2012 Agreement and Dr. DeSilva's refusal to provide SMRS with information necessary for the legal representation and Dr. DeSilva's creates a creates a serious financial burden and a conflict of interest and makes it impossible for SMRS to continue as attorneys for the Plaintiffs and Counterclaim Defendants.


FURTHER AFFIANT SAYETH NAUGHT.


Robert G. Block, Attorney at Law



Sworn to before me and acknowledged in my presence this ____ day of February, 2013.

REBECCA BURNS
Notary Public, State of Ohio
My Commission Expires
June 15, 2014


Notary Public
My commission expires: 6/15/2014

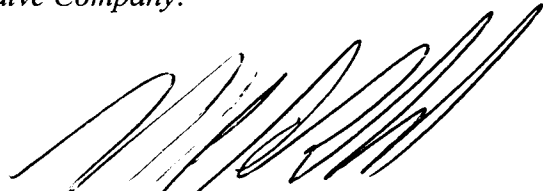
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Affidavit has been served on the 12th day of February, 2013 by ordinary electronic service on the following attorneys:

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Counterclaim Plaintiff Tyco Flow Control Pacific Pty Ltd.*

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